IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.36 OF 1991

1. Dhondi Dattu Nirmal
   (since deceased through legal heirs)

2. Smt.Ambubai Dhondi Nirmal

3. Rangrao Dhondi Nirmal

4. Sou Shalabai Rangrao Nirmal

5. Sadashiv Dhondi Nirmal

6. Mahadeo Dhondi Nirmal

All agriculturists, R/o.
Mauje Kandalgaon,
Tal: Karvir, Kolhapur ..Appellants
(Original Defendants)

versus

1. Shri Ramchandra Daulu Mirmal
   (since deceased through legal heirs)

a. Shivaji Ramchandra Nirmal
   agriculturist, R/o. Kandalgaon,
   Tal : Karvir, Kolhapur

b. Shri Lahu Ramchandra Nirmal
   agriculturist, R/o. Kandalgaon,
   Tal : Karvir, Kolhapur

c. Sou. Balabai Appasaheb Chavan
   Occ: Household, R/o. Kogil Khurud,
   Tal: Karvir.

..Respondents
(Original Plaintiffs)

Mrs. Teja Katdare for the Appellant

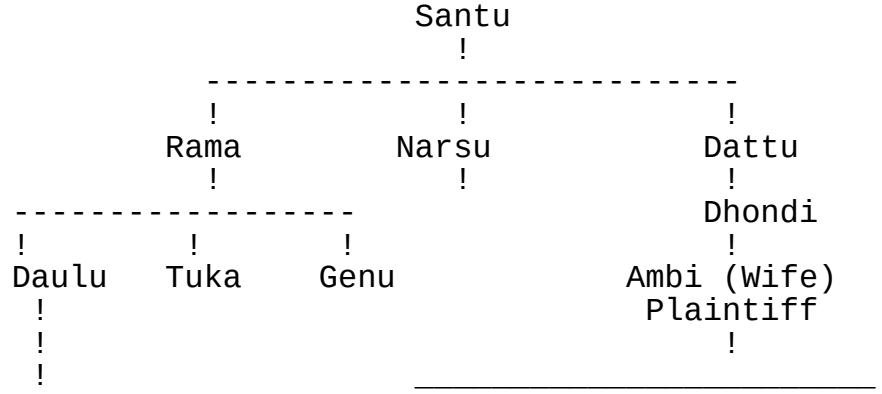
Mr.V.S.Gokhale for Mr.B.P.Apte for the Respondent

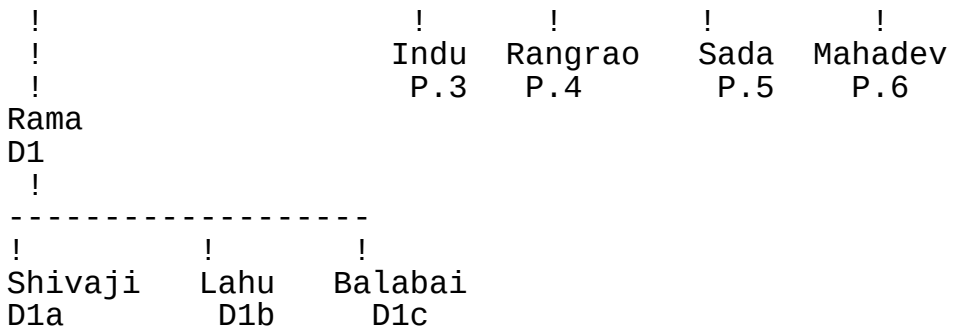
Coram : S.R.Sathe, J.
Dated : 13th April, 2006

ORAL JUDGMENT

1. Appellants, the original plaintiffs in Regular Civil Suit No. 481 of 1980 have preferred this appeal against the judgment and order passed by the Court of 5th Additional District Judge, Kolhapur, in Regular Civil Appeal No. 151 of 1986 whereby the judgment and order passed by the Court of Jt.C.J.S.D., Kolhapur, decreeing the plaintiffs suit for permanent injunction restraining the defendants from obstructing the plaintiffs possession of the suit land bearing block No.30A Hissa No.7 was confirmed. For the sake of convenience hereafter the parties shall be referred to as plaintiffs and defendants.

2. In order to appreciate the facts giving rise to this appeal it would be worthwhile to set out the geneology showing the relationship between the plaintiff and defendants.





. It is the case of the Plaintiffs that the suit land bearing block No.30 Hissa No.7 described in detail in paragraph 1 of the plaint is owned and possessed by him. Some portion of the said land is reserved for plantiff for grazing his cattle. The defendants were not at all cxoncerned with the suit land. Howver, on 15.6.1980 when plaintiff was cultivating the suit land defendants obstructed him. Hence the plaintiff filed suit for permanent injunction against the defendants on 17.6.1980.

3. The defendants filed their written statement at Exhibit 23 and contended that the suit land was not exclusively owned by the plaintiff. On the contrary the same is in joint possesion of plaintiff and defendants and both of them are cultivating the said land and takingh crop out of the same. However, for the sake of convenience only they have

divided the said land between them, but actual partition has never taken place between the plaintiff and defendants in respect of their joint family properties. According to defendants all the suit land and some other lands were initially owned by Santu. He had three sons, namely Rama, Narsu and Dattu. Narsu died issueless. Thus, according to plaintiff now the plaintiff and defendants are having half share each.

4. The defendant further contended that at the time of application of the provisions of Bombay Prevention of Fragmentation and Consolidation of holding Act to the suit property the name of plaintiff alone was entered in the record of rights. Taking undue advantage of the same plaintiffs started claiming ownership over the entire land. Thus, according to defendants the suit land is not exclusively owned and possessed by the defendants. The defendants therefore prayed for the dismissal of the suit.

5. On these pleadings the learned trial Judge framed issued at exhibit 45. As there was another suit pending between the same parties i.e. suit

No.539 of 1983, both the parties filed joint pursis that the evidence led in the above mentioned suit be also read in the present suit No.481 of 1980. So, after considering the said evidence the learned trial Judge came to the conclusion that the said land is exclusively owned and possessed by the plaintiffs and defendants obstructed to his possession. Naturally, the learned trial court decreed the suit for permanent injunction in plaintiffs favour.

6. Being aggrieved by the said order the original defendants filed Civil Appeal No.151 of 1986. However, the same also came to be dismissed.

7. The above mentioned order is challenged by the original defendant in the present second appeal. From the perusal of the record it appers that while admitting the appeal this court (Coram : A.A.Desai, J.) has passed the following order:

> "Admit. Whether the circumstances indicated on record are sufficient to consitute partition between the parties would be the substantial question of law involved in this

appeal"

8. In this appeal before me the learned Advocate for the defendants submitted that the fate of this appeal depends on the decision in appeal 51 of 1991 wherein the main issue with regard to partition is involved. According to her the evidence on record clearly indicates that the suit property was never partitioned between plaintiff and defendants and as such plaintiff was not in exclusive possesion of the suit land. She, therefore, submitted that the second appeal be allowed and decree for permanent injunction passed against defendants be set aside. As against this Shri Gokhale, learned Advocate for the respondent original plaintiffs supported the judgment and order passed by the courts below.

. Both the learned Advocates fairly submitted that the fate of this appeal depends on the decision of the Second Appeal No.52 of 1991. After considering the entire evidence and position of law elaborately I have held that the findings recorded by both the courts below in the suit for partition filed by the plaintiffs are legal and correct and

the Second Appeal No.52 of 1991 is dismissed. Naturally in the present appeal also it must be held that the land bearing Block No.31A Hissa No.7 is exclusively owned and possessed by the branch of Daulu. Both the courts rightly held that on the date of filing of the said suit plaintiff was in possesion and defendants obstructed to his possession. They, therefore, rightly decreed the suit and granted permanent injunction against the defendants restraining them from obstructing Ramchandera in cultivation of his land bearing Block No.30A, Hissa No.7 situated at Kandalgaon, Tal: Karveer , District Kolhapur. The said finding of fact given by both the courts below is legal and correct. There is no necessity to interfere with the same. Hence this Second Appeal is dismissed.

. Considering the peculiar circumstance of the case and the fact that the parties are relatives of each other there is no order as to cost.

(S.R.Sathe, J.)